

### AMENDMENTS TO THE CLAIMS

This listing of claims will replace all prior versions, and listings, of claims in the application:

**In the claims**

1. – 6. (Canceled).

7. (Currently amended): A tissue approximating device comprising:

first and second jaw members having terminal ends moveable toward one another, the moveability of the terminal ends defining a plane of coaptation; and

a tissue engaging rod, said tissue engaging rod having a tissue engaging portion that can extend generally out of the plane of coaptation in a first position, said tissue engaging rod moveable [[a]] to a second tissue engaging position that transects the plane of coaptation thereby positioning tissue contacted by the tissue engaging rod between the first jaw member and the tissue engaging rod, and between the second jaw member members and the tissue engaging rod; and

wherein the tissue engaging rod is configured to extend independently of the first jaw member.

8. (Currently amended): The device of ~~claim~~ Claim 7 wherein said first jaw member includes a lumen extending longitudinally through at least a portion of the first jaw member.

9. - 10. (Canceled).

11. (Currently amended): The ~~tissue approximating~~ device of ~~claim~~ Claim 7 wherein said tissue engaging rod is pivotally attached to said first and second jaw members.

12. - 27. (Canceled).

28. (Previously presented): The device of Claim 7, wherein the tissue engaging rod is configured to extend independently of the second jaw member.

29. (Previously presented): The device of Claim 7, further comprising a first handle integral with the first jaw member, and further comprising a second handle integral with the second jaw member.

30. (Previously presented): The device of Claim 7, further comprising a hinge, wherein the first jaw and the second jaw members are rotatably attached to the hinge.

31. (Previously presented): The device of Claim 7, wherein the first and second jaw members have inner surfaces facing toward one another.

32. (Previously presented): The device of Claim 7, wherein the first jaw member comprises a distal portion and a proximal portion, and wherein the distal portion is detachable from the proximal portion.

33. (Currently amended): The device of Claim 32, wherein the distal portion forms a substantially non-zero angle with respect to the proximal portion.

34 – 40. (Canceled)

41. (New): A tissue approximating device comprising:  
first and second jaw members having proximal ends moveable toward one another, the moveability of the proximal ends defining a plane of coaptation; and  
a tissue engaging rod, said tissue engaging rod having a tissue engaging portion that can extend generally out of the plane of coaptation in a first position, said tissue engaging rod moveable to a second tissue engaging position that transects the plane of coaptation thereby positioning tissue contacted by the tissue engaging rod between the first jaw member and the tissue engaging rod, and between the second jaw member and the tissue engaging rod; and  
wherein the tissue engaging rod is configured to extend independently of the first jaw member.

42. (New): The device of Claim 41 wherein said first jaw member includes a lumen extending longitudinally through at least a portion of the first jaw member.

43. (New): The device of Claim 41, wherein said tissue engaging rod is pivotally attached to said first and second jaw members.

44. (New): The device of Claim 41, wherein the tissue engaging rod is configured to extend independently of the second jaw member.

45. (New): The device of Claim 41, further comprising a first handle integral with the first jaw member, and further comprising a second handle integral with the second jaw member.

46. (New): The device of Claim 41, further comprising a hinge, wherein the first jaw and the second jaw members are rotatably attached to the hinge.

47. (New): The device of Claim 41, wherein the first and second jaw members have inner surfaces facing toward one another.

48. (New): The device of Claim 41, wherein the first jaw member comprises a distal portion and a proximal portion, and wherein the distal portion is detachable from the proximal portion.

49. (New): The device of Claim 48, wherein the distal portion forms a substantially non-zero angle with respect to the proximal portion.